

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
(916) 274-5721
FAX (916) 274-5743
www.dir.ca.gov/oshsb



**NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
AND NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS**

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **April 20, 2006**, at 10:00 a.m.
in the Auditorium, Room 102 of the Office Building 9,
744 P Street, Sacramento, California 95814.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **April 20, 2006**, following the Public Meeting
in the Auditorium, Room 102 of the Office Building 9,
744 P Street, Sacramento, California 95814.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS MEETING: On **April 20, 2006**, following the Public Hearing
in the Auditorium, Room 102 of the Office Building 9,
744 P Street, Sacramento, California 95814.

At the Business Meeting, the Board will conduct its monthly business.

The meeting facilities and restrooms are accessible to the physically disabled. Requests for accommodations for the disabled (assistive listening device, sign language interpreters, etc.) should be made to the Board office no later than 10 working days prior to the day of the meeting. If Paratransit services are needed, please contact the Paratransit office nearest you.

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**

JOHN D. MACLEOD, Chairman

NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS
BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **April 20, 2006**.

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 10
New Section 3395
Heat Illness Prevention

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 15, Section 3482 and
Article 109, Sections 5161 and 5178
Grain Handling Facilities

A description of the proposed changes are as follows:

1. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 10
New Section 3395
Heat Illness Prevention

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking action was initiated at the request of the Division of Occupational Safety and Health (Division). The request proposes a permanent Title 8 Section 3395 substantially similar to the emergency standard it is to supersede, which took effect August 22, 2005. Adoption of the emergency standard was prompted by a significant increase in the number of possible heat-related incidents reported to the Division starting approximately July 12, 2005. The majority of these incidents were subsequently found by Division investigations to be substantially heat-related according to medical opinion.

Currently, a number of existing Title 8 standards address related requirements with respect to key factors in control of heat-related illness, including the development of an injury and illness prevention program, provision of drinking water, and emergency first aid and medical response preparedness. These standards, which apply to various industry sectors, include sections 1230, 1512, 1524, 3203, 3363, 3400, 3439, 3457, 6251, 6512, 6969, 6975, 8420 and 8602. The proposed standard includes a reference to the existing requirements of these standards along with specific control and training measures to reduce the risk of heat-related illness.

There is no existing federal OSHA standard that specifically and comprehensively addresses prevention of heat illness. However, Federal OSHA does have requirements similar to those in the Title 8 standards identified above addressing drinking water, first aid, and other workplace factors that have applicability to prevention of heat illness.

New Section 3395. Heat Illness Prevention

The section proposed to be adopted as a permanent rule is to be placed in Article 10, Personal Safety Devices and Safeguards, immediately preceding the related Section 3400, Medical Services and First Aid.

New Section 3395(a). Scope and Application

This proposed subsection would provide that the requirements of the standard apply to all outdoor places of employment. The effect of the proposed subsection is to delineate the circumstances under which employers must take the specific steps detailed in the standard to prevent heat illness, as well as provide notice to employers of other specific Title 8 standards relevant to prevention of heat illness with which they need to comply, as follows:

The proposed language includes a clarifying note that is without direct regulatory effect and does not add any additional regulatory requirements. The note clarifies that employers may, if they choose, integrate the requirements of the proposed standard into their Injury and Illness Prevention Program that is required by Section 3203. A second clarifying note, also not adding requirements, reiterates the Division's authority to enforce the proposed standard and references sections of the Labor Code that

prohibit discriminating against employees for exercising their rights provided by this and other occupational safety and health standards.

The proposed subsection would limit the requirements of the proposed standard to employers with employees having significant exposure to outdoor work. The specific purpose of the proposed subsection is to limit the requirements of the proposed standard to employers with employees having significant exposure to outdoor work, with the intended effect of protecting employees performing such work from the increased risk of heat illness that can result from working without the environmental protections indoor working environments can provide.

The proposed subsection provides a list of other sections of Title 8, some of which are industry-specific and all of which may have application to the prevention of heat illness under certain circumstances, to make it clear to the regulated public that employers must continue to comply with these standards to the extent they apply after this proposed standard takes effect.

The scope of the emergency standard further limited application of its provisions to “those times when the environmental risk factors for heat illness as defined in (b), are present.” This limitation is not included in the proposed permanent rule because of the variability of environmental risk factors and the resulting difficulty of predicting with confidence when environmental risk factors for heat illness may be present. Therefore, the proposed permanent standard will be applicable at all times.

New Section 3395(b). Definitions

The proposed language includes definitions for six terms used in the standard. The proposed definitions will clarify for employers what is meant when the defined terms are used in the standard.

- (1) A definition is proposed for the term “acclimatization”. The proposed definition will clarify the topic to be addressed in the employee training requirement of proposed subsection (e).
- (2) A definition is proposed for the term “heat illness.” The definition gives examples of some of the forms of heat illness that are intended to be prevented by the proposed standard. The list is not all-inclusive and there are other conditions that can result from excessive exposure to work in heat. The definition indicates the types of illnesses intended to be prevented by the proposed standard.
- (3) A definition is proposed for “environmental risk factors for heat illness.” The definition describes major environmental and working conditions that need to be addressed in order to reduce the risk of occurrence of heat illness. The list is comprehensive but not all-inclusive, and there are other factors of an environmental nature that can affect the risk of occurrence of heat illness. The definition identifies an important set of issues in the prevention of heat illness that employees and supervisors must be aware of through training required by subsection (e).
- (4) A definition is proposed for “personal risk factors for heat illness.” The definition describes major health-related factors that vary from individual to individual and have a significant impact on an employee’s risk of developing heat illness. The list is comprehensive but not all-inclusive, and there are other factors related to an individual employee’s habits or physical condition that can affect the risk of occurrence of heat illness. The definition identifies an important set of issues in the prevention of heat illness that employees and supervisors must be aware of through training required by subsection (e).

(5) A definition is proposed for “preventative recovery period.” The definition describes the reason for providing access to shade in subsection (d) in order to effectively reduce the risk of occurrence of heat illness. The definition helps to clarify the intent behind the requirement to provide access to shade at outdoor places of employment.

(6) A definition is proposed for “shade.” It is proposed to define shade as blockage of direct sunlight. The definition is written to allow employers to choose any effective method available to provide shade, including the use of canopies, umbrellas, and other temporary structures or devices. The proposed definition further provides one example of how the adequacy of sunlight blockage can be determined, i.e., by determining whether objects cast a shadow in the area of blocked sunlight. While this is not the only acceptable method, and the adequacy of shade will depend to an extent on what is reasonable under the circumstances, it is still a simple, useful, and certain method employers can use to evaluate compliance. Finally, the definition makes it clear that the means for providing shade must be consistent with the purpose of shade, which is to provide cooling. The example of a car sitting in the sun without air conditioning is given as a non-compliant source of shade.

New Section 3395(c). Provision of Water

Proposed subsection (c) details requirements for the provision of drinking water as a means of controlling the risk of heat illness. The purpose of this proposed subsection is to reference existing drinking water requirements and to ensure that employees are provided with water quantities sufficient to maximize the effectiveness of drinking water as a measure to prevent heat illness. The proposed language requires a sufficient quantity for a full shift to be provided at the beginning of the shift, or periodically throughout the day in conjunction with effective procedures for replenishment. This subsection is necessary to give employers who provide water to their employees by means of portable containers appropriate notice of the specific minimum quantity of water they are required to provide.

The effect of this subsection is to give employers who provide water to their employees by means of portable containers appropriate notice of the specific minimum quantity of water they are required to provide when the standard is in effect.

New Section 3395(d). Access to Shade

Proposed subsection (d) details a requirement for employees performing outdoor work to have access to a shaded area for a period of no less than five minutes when a preventative recovery period is needed from the heat. The purpose of the proposed requirement is to ensure that employees needing a preventative recovery period have a suitable place to cool down.

New Section 3395(e). Training

Proposed subsection (e) details the topics which employees and supervisors are to be trained on with respect to prevention of, and response to, heat illness, its early signs and symptoms, and risk factors for its occurrence. The purpose of this proposed subsection is to clarify and make specific the training required to be provided to employees and supervisors with respect to prevention of, and response to, heat illness.

One change has been made to the language of the emergency standard, which is to require employers to train employees on the employer’s procedures for complying with this standard instead of training

employees on the employer's procedures for identifying, evaluating, and controlling exposures to the environmental and personal risk factors for heat illness.

The effect of this subsection is to ensure that employees are informed of various aspects of prevention and recognition of, and response to, heat illness, its early signs and symptoms, and risk factors for its occurrence. It will also ensure that employers have considered and developed procedures for complying with the requirements of the standard generally and specifically with respect to responding to the occurrence of symptoms of heat illness.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting state agencies. The cost associated with providing suitable protection from heat illness, as required by the proposal, is expected to be offset by improved productivity, improvement of employee health, and saving lives.

There is no additional cost of providing water since water is already required by existing Title 8 standards. Specifying a requirement to provide at least one quart per hour is consistent with national consensus recommendations and industry practice and is not anticipated to be an additional cost.

The cost of providing shade is considered insignificant. Existing standards require personal protection when necessary to protect employees from harmful exposures. The additional cost of providing shade is estimated to be minimal for those few outdoor places of employment that do not already have shade where employees could potentially need a recovery period. Typical state agencies with a significant number of employees working outdoors include: Department of Forestry and Fire Protection (CDF), Department of Transportation, California Highway Patrol, Department of Corrections and Rehabilitation, Environmental Protection Agency, and Resources Agency. Employees of the other state agencies who work outdoors typically have access to shade. So very few, if any, would need to purchase canopies or other forms of additional shade. Temporary shade structures can be purchased for approximately \$100, and can be erected in minutes. However, for those few locations that need additional shade, this additional cost would be more than offset by the increased productivity, improvement of employee health and saving lives associated with the benefits of shade and other cooling measures. Therefore, any additional cost associated with providing shade to employees, as required by the proposal, is estimated to be insignificant to none.

The proposed employee training requirements are performance based and do not mandate a specific amount of training time. Training is already required by Section 3203, Injury and Illness Prevention Program, and therefore should not be considered an added cost of this proposed standard.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. See the discussion of cost or savings to state agencies above.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies. See the discussion of cost or savings to state agencies above.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed standard will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this standard does not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

This proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, this proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

This proposed standard does not impose unique requirements on local governments. All state, local and private employers who perform agricultural operations will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed standard may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

2. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 15, Section 3482 and
Article 109, Sections 5161 and 5178
Grain Handling Facilities

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This proposed rulemaking is the result of a Petition (OSHSB File No. 452) to the Occupational Safety and Health Standards Board (Board) from Robert D. Peterson, Law Corporation, on behalf of the California Grain and Feed Association. The Petitioner requested the Board to adopt Federal standards contained in 29 CFR 1910.272, Grain Handling Facilities, and its non-mandatory informational appendices. The Petitioner stated that the purpose in requesting the adoption of the federal standards is to consolidate safety requirements for grain storage and handling facilities, including feed mills, grain elevators, rice mills, rice dryers and grain warehouses into a single standard. Although state standards pertaining to grain handling facilities are contained in various sections throughout the General Industry Safety Orders (GISO), there are no comparable state standards for some federal grain handling standards.

Outdoor grain storage, a practice somewhat unique to California because of climatic conditions, is not addressed in the federal standards. The outdoor grain pile storage method as it is applied in California is similar in effect to flat storage; that is, the grain will not empty by gravity, but must be moved by the use of powered equipment or manual means. Therefore, the Petitioner proposed that federal standards for flat storage structures found in 29 CFR 1910.272(h), "Entry into flat storage structures," should apply to outdoor grain storage piles.

The petition was granted by the Board to the extent that an advisory committee was convened to compare the state's grain handling and storage facility standards with federal counterpart requirements and, if warranted, develop a rulemaking to ensure that the state's standards are up-to-date and at least as effective as those contained in 29 CFR 1910.272.

State standards for grain handling facilities have been compared with federal standards, and where not at least as effective, modifications to existing GISO sections 5161 and 5178 have been proposed. Board staff notes that the federal standard is a vertical (industry-specific) standard and that Title 8 is primarily written as a horizontal standard. Therefore, some federal standards have state counterparts in other sections of Title 8. The proposed rulemaking only proposes to update portions of sections 5161 and 5178 where there are no state counterpart standards to those presently found in the federal standard.

GISO section 3482, Bulk Storage of Loose Material, addresses flat storage of loose materials such as sand, sawdust, chips, gravel, fuel, seed or similar granular or loose materials within bins, bunkers, hoppers, silos or other structures. As currently adopted, section 3482 has been interpreted to include outdoor grain storage. However, the advisory committee determined that grains are not free flowing (loose) materials and do not present an engulfment hazard as addressed by section 3482.

As part of the review and comparison of state standards for grain handling with the federal grain handling standards contained in 29 CFR 1910.272, the Petitioner has requested that the provisions of 1910.272(h), "Entry into flat storage structures," should be clarified to apply to outdoor grain piles as well. In order to accomplish this, Board staff's proposal includes a note and a few minor modifications to section 3482 to eliminate confusion about its applicability and to direct the public to section 5178 for requirements pertinent to grain handling facilities.

This proposed rulemaking action contains numerous nonsubstantive, editorial, reformatting of subsections, and grammatical revisions. These nonsubstantive revisions are not all discussed in this Informative Digest. However, these proposed revisions are clearly indicated in the regulatory text in underline and strikeout format. In addition to these nonsubstantive revisions, the following actions are proposed:

Section 3482. Bulk Storage of Loose Material.

This section prescribes work practices, construction and equipment for bulk storage of loose material where the hazard of engulfment/entrapment exists by virtue of the flow characteristics of the stored material. Board staff, with the assistance of the advisory committee, determined that grains are not free flowing (loose) materials and thus do not present an engulfment hazard as addressed by section 3482. Therefore, a note is proposed for subsection 3482(a) that work in grain handling facilities shall be in accordance with the provisions of section 5178, Grain Handling Facilities. References to grain in subsections (c)(1) and (e) are also proposed to be deleted.

The effect of these proposed modifications would be to clarify that section 3482 is not intended to apply to grain handling facilities and to direct the regulated public to section 5178 for standards for grain handling facilities.

Section 5161. Definitions.

This section contains definitions for terms used in Article 109, Hazardous Substances and Processes. It is proposed to define "flat storage structure" as "a grain storage building or structure, that is not a

confined space as defined by section 5158, that will not empty completely by gravity, and that has an unrestricted ground level opening to permit entry to reclaim grain using powered equipment or manual means. Flat storage structures include flat bottom buildings where grain is stored on the floor or other structures where grain is stored in a pile in bulk on a flat bottom surface.” The effect of this new definition [based on 29 CFR 1910.272(c)] would be to clarify the application of section 5178 for flat grain storage structures.

Section 5178. Grain Handling Facilities.

Subsection (a), Scope.

An existing subsection (a), which requires the employer to issue a written authorization before employees enter bins, silos, or tanks is proposed to be relocated to subsection (b). This relocation is necessary in order to clarify the scope of section 5178 by titling, lettering and amending an existing unlettered introductory sentence which describes the scope of section 5178 as follows: “This section and section 5158 applies to all grain handling facilities.”

Modifications are proposed to clarify the scope of section 5178 as follows:

The scope section is proposed to be lettered subsection (a) and entitled “Scope,” in order to assist users in the proper application of this subsection. Four subsections are proposed to clarify the scope of section 5178 as follows:

- (1) The existing unlettered introductory sentence is proposed to be lettered subsection (a)(1) and to be amended to include grain elevators, flat outdoor storage and flat storage structures, feed mills, flour mills, rice mills, dust pelletizing plants, dry corn mills, soybean flaking operations, and the dry grinding operations of soybean. The general cross-reference to section 5158 is proposed to be deleted due to proposed modifications and more specific cross-references elsewhere in the standard.
- (2) A new subsection (a)(2) is proposed to define the term “grain” for the purposes of this section.
- (3) A new subsection (a)(3) is proposed to clarify that this section contains requirements for the control of grain dust fires and explosions, and certain other safety hazards associated with grain handling facilities.
- (4) The existing “exception” to the unlettered introductory sentence is proposed to be modified and designated subsection (a)(4). “On-farm and feedlot facilities” are proposed to be removed from the exception as this exclusion is not found in the federal counterpart and because some California dairy farmers store livestock feed grains outdoors on their farms.

The effect of these relocations and modifications is to clarify the scope of section 5178 and to substantially conform it to its federal counterpart [29 CFR 1910.272(a) and (b)].

Subsection (b), Entry into grain storage structures.

Subsections (b)(1) and (b)(2).

Existing subsection (a) requires the employer to issue a written authorization before employees enter bins, silos, or tanks, unless the operation is under the supervision of a qualified supervisor. Existing subsection (b) requires atmospheric testing of confined spaces prior to entry. Since both existing subsections (a) and (b) deal with entry into grain storage structures, they are proposed to be included in a new subsection (b) entitled “Entry into grain storage structures.” Subsections (a) and (b) are also proposed to be re-lettered as subsections (b)(1) and (b)(2) respectively.

A clarification for subsection (b)(1) is also proposed. The current verbiage could be interpreted to be limited only to bins, silos or tanks. A modification is proposed to clarify that this provision applies to entry into any confined space in a grain handling facility.

The effect of these modifications would be to simplify application by grouping entry requirements for grain storage structures of all types into one subsection.

Subsection (b)(3).

This new subsection is proposed to clarify that existing lockout/tagout provisions of section 3314 apply when employees must enter grain storage structures.

California lockout/tagout standards are a horizontal/industry-wide requirement; however the inclusion of a cross-reference here clarifies their applicability to grain handling facilities. The effect of the cross-reference would be to simplify compliance for affected parties and substantially conform the California standard to the counterpart federal standard [29 CFR 1910.272(g)(1)(ii)].

Subsection (b)(4).

This new subsection is proposed to prohibit employees from “walking down grain” to make it flow and to prohibit employees from walking or standing on moving grain.

The effect of this subsection, which is verbatim of the federal standard [29 CFR 1910.272(g)(1)(iv) and (h)(2)(ii)], would be to protect employees from engulfment hazards and from being caught in equipment, such as augers, used to move grain into or out of grain structures.

Subsection (b)(5).

This new subsection is existing subsection (h), which has been relocated and clarified to include grain products as well as grain. It would prohibit employees from being underneath a bridging condition, or in any other location where an accumulation of grain or grain products on the sides or elsewhere could fall and engulf the employee.

The effect of these modifications would be to clarify its application to all grain storage structures (not just bins, silos and tanks) and to include engulfment hazards caused by bridging and/or accumulation of grain products as well as grain.

Subsection (b)(6).

This new subsection would require the employer to equip the employee with a Class III body harness with lifeline, or a boatswain’s chair, and would require a second employee to be present when an employee enters a grain storage structure from a level at or above the level of the stored grain or grain products, or when an employee walks or stands on or in stored grain of a depth which poses an engulfment hazard.

A new subsection (b)(6)(A) is proposed to require that the lifeline be positioned, and of sufficient length, to prevent the employee from sinking further than waist-deep in the grain. Exceptions are proposed: (1) Where the employer can demonstrate that the protection required by this subsection is not feasible or creates a greater hazard, the employer shall provide an alternative means of protection to

prevent the employee from sinking further than waist-deep in the grain; (2) To permit the lifeline or alternative means to be disconnected or removed when the employee is standing or walking on a surface which the employer demonstrates is free from engulfment hazards. The effect of this new subsection would be to conform California standards to counterpart federal standards [29 CFR 1910.272(g)(2) and (h)(1)].

Subsection (b)(7).

This new subsection would require the employer to provide necessary equipment and qualified personnel for rescue operations. The effect of this new subsection would be to substantially conform California standards to counterpart federal standards [29 CFR 1910.272(g)(4)].

Subsection (c), Hot work.

Existing subsection (c) which prescribes housekeeping requirements for grain elevators is proposed to be relocated to subsection (d) in order to permit the insertion of a new subsection for hot work.

A new subsection (c) is proposed to be entitled "Hot work." It would require the employer to issue a permit for all hot work, with two exceptions, consistent with federal standards. The effect of this new subsection (c) would be to substantially conform California standards for hot work at grain handling facilities to counterpart federal standards [29 CFR 1910.272(f)].

Subsection (d), Housekeeping.

Existing subsection (d), which prescribes monitoring requirements for fabric dust filter collectors is proposed to be relocated to subsection (f)(1) in order to accommodate housekeeping requirements which are being relocated from existing subsection (c).

The new subsection (d) is proposed to be entitled "Housekeeping," and would contain the housekeeping provisions of existing subsection (c), including the existing exception, and is proposed to be amended with additional provisions found in the federal counterpart standard [29 CFR 1910.272(j)(1) and (j)(3)] which are not presently found in Title 8. The amendments would (1) require the housekeeping program to be in writing, and (2) include federal restrictions on the use of compressed air for dust removal. The effect of these amendments would be to conform California standards for housekeeping to counterpart federal standards [29 CFR 1910.272(j)].

Subsection (e), Grate openings.

Existing subsection (e) which prescribes automatic control requirements for direct-heat grain dryers is proposed to be relocated to subsection (i)(1) in order to accommodate new proposed standards for grate openings.

The new subsection (e) is proposed to be entitled "Grate openings," and would require grain receiving-pits to be covered by grates. The proposed subsection would also specify the maximum permissible grate opening size. The proposed subsection is verbatim of federal standards [29 CFR 1910.272(k)]. The effect of these amendments would be to protect employees from falling into pits or getting their feet lodged in grates covering pit grate openings, and would conform California standards to those of counterpart federal standards.

Subsection (f), Filter collectors.

Existing subsection (f), which prescribes permissible locations for direct-heat grain dryers is proposed to be relocated to subsection (i)(2) in order to accommodate monitoring requirements for fabric dust filter collectors which are proposed to be relocated from existing subsection (d).

The new subsection (f) is proposed to be entitled “Filter collectors.” Proposed subsection (f)(1) would contain existing pressure drop monitoring requirements for fabric dust filter collectors which are part of a pneumatic dust collection system. These provisions are proposed to be relocated from existing subsection (d).

Proposed subsection (f)(2) would prescribe permissible locations for installation of filter collectors. This subsection is substantially equivalent to existing federal standards [29 CFR 1910.272(l)(2)]. The effect of these modifications and amendments would be to conform California standards to those of counterpart federal standards.

Subsection (g), Preventive maintenance.

Existing subsection (g) contains requirements for inside bucket elevators, including operation, maintenance, equipment access, and monitoring. This subsection is proposed to be relocated to new subsection (j) in order to accommodate new subsection (g) for preventive maintenance. The new subsection (g) is proposed to be entitled “Preventive maintenance.”

Proposed subsection (g)(1) would require the employer to implement preventive inspection and maintenance procedures, and prescribes the general content of those procedures. Proposed subsection (g)(2) would require the employer to take prompt corrective measures for deficiencies and malfunctions that are discovered. Proposed subsections (g)(1) and (g)(2) are verbatim of existing federal standards [29 CFR 1910.272(m)(1) and (m)(2)].

Proposed subsection (g)(3) states that lockout/tagout procedures shall be implemented in accordance with section 3314, and is substantially equivalent to existing federal standards [29 CFR 1910.272(m)(4)]. The effect of subsection (g) would be to conform California standards to counterpart federal standards.

Subsection (h), Grain stream processing equipment.

Existing subsection (h) prohibits employees from entering bins, silos, or tanks underneath a bridging condition, or where a buildup of grain products on the sides could fall and bury them. This existing subsection is proposed to be relocated to subsection (b)(5).

A new subsection (h) is proposed to be entitled “Grain stream processing equipment” and it would require grain stream processing equipment to be equipped with an effective means of removing ferrous materials from the incoming grain stream. The effect of this new subsection (h) is to conform California standards to counterpart federal standards [29 CFR 1910.272(n)].

Subsection (i), Continuous-flow bulk grain dryers.

Existing subsection (i) requires documentation of inspections and maintenance performed on grain handling machinery and equipment. The existing subsection (i) is proposed to be relocated to new

subsection (k) in order to accommodate provisions for continuous-flow bulk grain dryers, which are being combined and relocated from existing subsections (e) and (f).

The new subsection (i) is proposed to be entitled “Continuous-flow bulk grain dryers.” New subsection (i)(1) would contain existing automatic control requirements for direct-heat grain dryers which are proposed to be relocated from existing subsection (e). New subsection (i)(2) would contain existing provisions proposed to be relocated from existing subsection (f) which prescribes permissible locations for direct-heat grain dryers. These proposed relocations would have no regulatory effect and are only proposed in order to accommodate other provisions which are being inserted to conform California standards to counterpart federal standards.

Subsection (j), Inside bucket elevators (bucket elevators).

This is a new subsection created to incorporate existing provisions for inside bucket elevators which are currently contained in existing subsection (g). The title of new subsection (j), “Inside bucket elevators (bucket elevators),” is proposed to be the same as existing subsection (g). No substantive changes are proposed to the existing text. These proposed relocations would have no regulatory effect and are only proposed in order to accommodate other provisions which are being inserted to conform California standards to counterpart federal standards.

Subsection (k), Record keeping.

This new subsection is proposed to be entitled “Record keeping” and to incorporate the existing provisions of subsection (i) which requires documentation of inspections and maintenance performed on grain handling machinery and equipment. The existing requirements of subsection (i) have been amended to include documentation of preventive maintenance required by subsection 5178(g). The effect of the amendment is to substantially conform to the federal counterpart [29 CFR 1910.272(m)(3)] and to assure that preventive maintenance is performed and documented, thus improving workplace safety.

Subsection (l), Contractors.

This new subsection is proposed to require the employer to inform contractors performing work at the grain handling facility of (1) known potential fire and explosion hazards related to the contractor's work and work area, (2) applicable safety rules of the facility, and (3) applicable provisions of the emergency action plan. The effect of this amendment would be to conform California standards to counterpart federal standards [29 CFR 1910.272(i)].

Subsection (m), Emergency escape.

This new subsection is proposed to require the employer to provide means of escape from galleries (bin decks) and from tunnels in grain elevators. The effect of this amendment would be to conform California standards to counterpart federal standards [29 CFR 1910.272(o)].

Subsection (n), Training.

This new subsection is proposed to prescribe training specific for grain handling facilities. The proposed subsection would also cross-reference section 3203 for general industry training requirements.

The effect of this amendment would be to substantially conform California standards to counterpart federal standards [29 CFR 1910.272(e)].

Subsection (o), Emergency action plan.

This new subsection is proposed to direct the employer to existing general industry requirements for an emergency action plan which are found in section 3220. The effect of this amendment would be to substantially conform California standards to counterpart federal standards [29 CFR 1910.272(d)].

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed

amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these standards do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed standards do not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses; however, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to these standards will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board’s Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board’s Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that

written comments be submitted so that they are received no later than April 14, 2006. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on April 20, 2006, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposal substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Keith Umemoto, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

JOHN D. MACLEOD, Chairman

TITLE 8

GENERAL INDUSTRY SAFETY ORDERS

CHAPTER 4, SUBCHAPTER 7 ARTICLE 10

NEW SECTION 3395

HEAT ILLNESS PREVENTION

TITLE 8

GENERAL INDUSTRY SAFETY ORDERS

CHAPTER 4, SUBCHAPTER 7 ARTICLE 15, SECTION 3482 AND

ARTICLE 109, SECTIONS 5161 AND 5178

GRAIN HANDLING FACILITIES

NOTICE OF ADOPTION OF
REGULATIONS
INTO TITLE 8, CALIFORNIA CODE OF REGULATIONS
BY THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

After proceedings held in accordance with and pursuant to the authority vested in Sections 142, 142.3 and 142.4, of the Labor Code to implement, interpret, or make specific, the Occupational Safety and Health Standards Board, by a majority vote, adopted additions, revisions, or deletions to the California Code of Regulations as follows:

1. Title 8, Chapter 4, Subchapter 4, Construction Safety Orders, Article 20, Section 1635, Floor Openings.

Heard at the November 17, 2005, Public Hearing; adopted on December 15, 2005; filed with the Secretary of State on January 25, 2006; and became effective on February 24, 2006.

2. Title 8, Chapter 4, Subchapter 4, Construction Safety Orders, Article 3, Section 1518, Protection from Electric Shock.

Heard at the July 21, 2005, Public Hearing; adopted on December 15, 2005; filed with the Secretary of State on January 27, 2006; and became effective on February 26, 2006.

A copy of these standards are available upon request from the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721.

If you have Internet access, visit the Occupational Safety and Health Standards Board by going to: **<http://www.dir.ca.gov/oshsb>** and follow the links to the Standards Board. This information is updated monthly. The Standards Board's e-mail address is: **oshsb@dir.ca.gov**.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Keith Umemoto, Executive Officer

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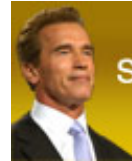


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The Department of Industrial Relations

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